IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.5885 OF 2007
AND
M.P.NO.1 OF 2007

R.Ranganathan .. Petitioner

Vs.

1.The Superintendent of Police,
Salem.

2.The Deputy Inspector General of Police,
Salem Range, Salem. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution for the issue of a writ of certiorarified mandamus to call for the records of the first respondent relating to P.R.No.12/H3/2001, dated 12.07.2001 and that of the second respondent in Proc.Rc.No.B1/7354/2001 (AP.13/2001), dated 15.09.2001, quash the same and to grant him all consequential service and monetary benefits.

For Petitioner : Mr.Duraisamy, SC
for M/s.Muthumani Doraisamy
For Respondents: Mr.S.Gopinathan, AGP

ORDER

This writ petition was taken on file by this court in W.P.No.5885 of 2007 on transfer of O.A.No.3065 of 2002 on the file of the Tamil Nadu Administrative Tribunal, Chennai.

2.The petitioner has sought for quashing the order of the first respondent, dated 12.7.2001 in P.R.No.12/H3/2001 and the second respondent in Proc.Rc.No.B1/7354/2001 (AP.13/2001), dated 15.09.2001.

3.The contents of the petition and also the grounds on which challenge is made are looked into. The court heard the learned Senior Counsel for the petitioner and also the learned counsel for the respondents.

4.The case of the petitioner in short is that while he was working in Armed Reserve Unit, Salem, he was on leave from 21.3.2001 for four days as his mother fell sick and as she had no one else to attend on her; that he had applied for leave on 20.3.2001 to the concerned Inspector of Police,

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which was also granted. Subsequently, he was to extend his leave as he was suffering from Chickenpox for a period of one month from 27.3.2001 and again for five days from 26.4.2001. He submitted leave application along with medical certificate. After complete recovery, he met the Superintendent of Police along with fitness certificate and he allowed him to work. A departmental enquiry was initiated by serving a memo on him that he has deserted duty for 21 days from 27.3.2001 till 16.4.2001 and an enquiry was conducted. Despite explanation tendered, the Deputy Superintendent of Police, Mettur, who was appointed as an Enquiry Officer, after conducting enquiry, has recorded a finding that he is guilty and he was further asked to submit his representation, which he made. But, he was imposed penalty of postponement of increment for two years with cumulative effect. Aggrieved over the same, he preferred an appeal, which was dismissed. Under these circumstances, he moved the Tamil Nadu Administrative Tribunal by way of O.A. to quash the order.

5.In support of the case of the petitioner, the learned Senior Counsel would submit that in the instant case, the authorities below have passed the orders without application of mind. It is not in controversy that the petitioner applied for four days leave and that was granted. From 27.3.2001, he was suffering from chickenpox. While he was suffering so, he has sent the medical certificate on 19.4.2001, but the same was returned to the petitioner and after his recovery, the petitioner met the Superintendent of Police along with the medical certificate and fitness certificate and the Superintendent of Police found that his case is genuine and he has permitted him to rejoin duty. Accordingly, he reported duty and under these circumstances, the leave application given by him should have been entertained and granted. On the contrary, the proceedings were initiated. The explanation tendered by him should have been accepted, but not done so. Added further the learned Senior Counsel that in the instant case, once the leave application was sent along with the medical certificate on 19.4.2001, a duty was cast upon the Department to open the same, look into and to act on the same, but it was returned. Even the return of the said medical certificate, which was submitted by him through post on 19.4.2001, was actually incorporated in the order, but the Department has no explanation to offer under what circumstances it was returned. It is quite natural, when he was suffering from Chickenpox, he had taken native treatment. Under these circumstances, once he had filed the medical certificate to the effect that he was suffering from chickenpox and the Superintendent of Police also was satisfied with the situation, there was no need to conduct enquiry or to record a finding that he was found guilty and also to award punishment, in question. The petitioner, who got number of rewards to his credit from the department, was denied further promotion because of the imposition of punishment and hence, the it has got to be set aside.

6.The court heard the learned counsel for the respondents on the above contentions.

7.After looking into the materials available and considering the submissions made, the court is of the considered opinion that the petition has got to be ordered as prayed for by the petitioner.

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8.It is not in controversy that the petitioner, who is the Police Constable attached to Armed Reserve Unit, was on leave for a period of four days from 21.3.2001, which was also granted. From 27.3.2001 onwards, he was suffering from Chickenpox. Even from the impugned order, it would be quite clear that he also sent his medical certificate to the department by post, but the same was actually returned. Now, it is pertinent to point out that once the medical certificate was sent by the petitioner, who was actually suffering from chickenpox and could not move about, the medical certificate could have been looked into and entertained. On the contrary, even without opening the postal cover, it was returned to him. Probably, after looking the address of the petitioner, from whom it was sent, the Officer, who received the postal cover, would have returned it. Even the Officer can reject it after looking into the certificate. But, in the instant case, there was no occasion to look into the certificate, since the postal cover was not opened or considered. After recovery, the petitioner along with the fitness certificate, met the Superintendent of Police, who has permitted him to rejoin the duty.

9.At this juncture, it remains to be stated that if the Superior Officer, namely the Superintendent of Police, was not satisfied with the contentions of the petitioner, there was no occasion for him to allow the petitioner to report duty. On the instructions of his superior officer, namely the Superintendent of Police, the petitioner has reported duty. Considering the facts that he was actually suffering from Chickenpox and he sent his medical certificate on 19.4.2001 and the same has not been looked into or considered by the department, but he was allowed to rejoin duty along with medical certificate and fitness certificate, it is a fit case where leave should have been granted and there was no need even for initiating proceedings. But, there was proceedings initiated. At least, the explanation tendered by the petitioner should have been accepted, but not done. Apart from that, not even one incident was brought to the notice of the authority or court to speak about the bad antecedent of the petitioner. On the contrary, the petitioner would submit that he has got number of rewards from the department while he was working.

10.In appraisement of all the facts and circumstances of the case, the court is of the considered opinion that it is a fit case where the entire proceedings initiated and also the punishment awarded have got to be quashed. Accordingly, they are quashed. This writ petition is ordered. No costs. Consequently, the connected MP is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Superintendent of Police,
Salem.

2.The Deputy Inspector General of Police,
Salem Range, Salem.

1 cc To M/s.Muthumani Doraisamy, Advocate, SR.72642.
1 cc To The Government Pleader, SR.72841.

W.P.NO.5885 OF 2007

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